

Appendix B – Meeting Minutes August 17, 2022

Commission to Improve Standards of Conduct

Members:

Judge Daniel R. Foley (Ret.), Chair;

Robert D. Harris, Executive Director and General Counsel of the State Ethics Commission, Vice Chair;

Kristin E. Izumi-Nitao, Executive Director of the Campaign Spending Commission;

Nikos Leverenz, Common Cause Hawaii Advisory Board Member;

Barbara C. Marumoto, Former State Representative;

Janet Mason, Legislative Committee Member, League of Women Voters of Hawaii; and

Florence T. Nakakuni, Former U.S. Attorney for the District of Hawaii.

Note: Ms. Sandy Ma, Executive Director of Common Cause Hawaii, resigned from the Commission effective June 17, 2022, and Mr. Nikos Leverenz was appointed by Speaker of the House of Representatives Scott Saiki to fill that vacancy via [memorandum](#) on the same day.

Resources:

The Commission's website, which includes related materials and information such as House Resolution No. 9 (Regular Session of 2022), the Commission's Interim Report, and meeting notices and minutes, can be found here: [Committees \(hawaii.gov\)](#)

Recordings of the Commission's public meetings may be viewed on the House of Representatives' YouTube channel found here: [Hawaii House of Representatives - YouTube](#)

The Commission may be contacted via email at standardsofconduct@capitol.hawaii.gov

Limited decision-making occurred at the meeting. Any proposals or final recommendations to be adopted by the Commission and subsequently submitted to the House of Representatives in its Final Report will be the subject of future public meetings and take into consideration input from the input.

Appendix B – Meeting Minutes August 17, 2022

I. Call to order/Roll call

Chair Foley convened the meeting at 2:03 p.m. All Commissioners were present for the meeting.

II. Approval of minutes

The minutes from the July 27, 2022, meeting of the Commission were approved and adopted.

III. Public testimony

The Commission received written public testimony from numerous individuals.

The Commission heard oral public testimony from four individuals pertaining to:

- Concerns over the unilateral decision-making power of an individual chairperson to defer legislation indefinitely without a vote by the committee and the unilateral authority of the chairperson to determine which measures are to be scheduled for a public hearing;
- The practice of conference committees not accepting any written or oral testimony;
- The ambiguity surrounding the committee referral process of bills; and
- The amount of bills introduced each year and the duplication of ideas.

IV. Guest Speakers:

Vice Chair Harris facilitated a discussion on the legislative process from the following guest speakers:

A. Representative Della Au Belatti, Majority Leader House of Representatives

Representative Au Belatti addressed concerns expressed in public testimony regarding the unilateral discretionary power of a chairperson. Representative Au Belatti requested the Commission to examine the current rules of the House and Senate and take into consideration the legislators in each chamber that collaborate with one another to ensure that critical bills are heard, thoroughly vetted, and amended as necessary to address concerns raised in testimony. Specifically, she noted that there are rules in the House to address concerns of legislators, request for certain bills to be heard, or limit the unilateral power of a chairperson. She said the power of a chairperson is already curtailed by Committee members who can vote bills down. She noted that the complexity of a bill may require a three committee House referral. She was also able to provide context on the

Appendix B – Meeting Minutes August 17, 2022

committee hearing process that requires chairs to sift through many ideas and concerns, consolidate certain ideas, and recognize themes or priorities. Representative Au Belatti also explained why certain bills may not get a hearing or are deferred and noted that committee chairs are usually open to addressing a stakeholders' request for an explanation on why a bill was not heard or deferred in committee. Specifically, Representative Au Belatti cited House Rules 11.3 and 11.5 in setting forth the current decision-making process for committees, including bill deferral and petitioning a Chair to have a public hearing on a bill, however she added that she had not seen this rule used. Vice Chair Harris asked whether Committee Members might be reticent to overturn a Chair's wishes, and whether having a lower standard than a majority (e.g. 20-30% of the Committee) would be preferable. Representative Au Belatti said she would not be opposed to the idea of empowering members of a Committee to determine measures heard by the Committee, but she questioned how effective a lower threshold would actually have on the process. She added that usually if 50% or more of the members of a committee wanted a bill heard it would most likely be scheduled. Representative Au Belatti pointed out that Chairs are persuasive with their Committees. Commission members who asked Representative Au Belatti about making the deferral process more transparent included Chair Foley, Vice Chair Harris, and Commissioners Janet Mason, Barbara Marumoto, and Nikos Leverenz.

Representative Au Belatti mentioned that she agreed with Commissioner Marumoto that limiting the number of bills each legislator can introduce is not necessary because the House Committee structure screens down the number of bills. Commissioners Mason and Leverenz suggested a form with a checklist of options that the committee chairperson or clerk could sign when the decision is made to defer a bill. Representative Au Belatti's primary concern over a change to provide a formal explanation of a committee chairperson on why a measure was not scheduled for a hearing or deferred indefinitely would be the potential human resources that would be necessary to document such actions for public disclosure as well as the challenge of following legislative deadlines. She expressed concern over when release of such a document would occur. There are generally large issues that demand attention. Commissioner Marumoto stated that it is important to have proper Committee discussion about why a bill does not go forward, and Commissioner Leverenz pointed out that such a checklist need not be onerous because Chairs have these conversations all the time; a checklist would just memorialize the action. Representative Au Belatti said she was not opposed to this idea and could look into the idea of a checklist, but in her experience, Chairs were already happy to talk with advocates about this question.

B. [Senator Chris Lee, Chair of the Senate Committee on Transportation.](#)

Senator Lee provided context on the workload and timeline of a legislator and a chairperson during a legislative session regarding the introduction of bills, scheduling of a hearings, and the logistical challenges in hearings with trying to afford everyone an appropriate amount of time to deliberate and discuss a bill. He said many time constraints lead to a deficit to transparency for the public at Committee hearings and in Conference committees. Typically, he personally has about 200 topics of interest for introduction

Appendix B – Meeting Minutes August 17, 2022

during the session, but he must whittle them down while continuing to represent his community. He noted the constraints that the state constitution has on the Legislature and the legislative calendar. He stated that although progress to build efficiencies in the process was achieved during the pandemic, including online testimony from the public, meaning Hawaii may now be the easiest state for the public to testify on bills. However, more testimony together with email and social media has increased the volume of messages a legislator receives, as much as 6-7 times in the past few years. He pointed out these impacts on a part-time legislator and how more resources may help as they are currently without sufficient resources like an adequate mailing allowance for constituent mailers.

There is still so much work that must be completed within the sixty-day legislative calendar. Chair Foley asked whether having a full-time Legislature would require a constitutional amendment, and Senator Lee responded "yes," but there is scheduling flexibility within the current construction of the constitution. Senator Lee said he now has thousands of social media contacts, but from his experience many of his constituents find out what is being discussed at the Capitol through his annual newsletter mailer. Commissioner Mason asked whether having a longer mid-term break would be helpful. Senator Lee responded that rest sometimes would certainly be welcomed and it could allow for more lengthy deliberations on certain topics, but he also cautioned that an extended break could result in some of the momentum of the discussion being lost or details of the issues being forgotten once the Legislature resumed discussions. He further stated that the House and Senate practices already require a minimum 48 hour or 72 hour hearing notice requirement prior to hearing a bill, so that helps to give people a chance to understand the issues. Senator Lee said that modifying that process could help, but cautioned that it would need to be done right to not negatively impact other aspects of the process. Vice Chair Harris asked whether spacing out recesses would be helpful, for the conference committees. Senator Lee said there is some flexibility in scheduling during Conference as those rules are agreed to each year between the House and Senate, but he also expressed concerns over the possible extension of the legislative session on other processes such as the timing afforded to the Governor to review bills and for the administration to prepare for the fiscal year.

Vice Chair Harris asked Senator Lee to share his thoughts on term limits. Senator Lee expressed that his view on term limits has changed as he has obtained more experience as a legislator due to the steep learning curve. He noted that he didn't realize how much time and effort is needed to understand and navigate the legislative process. He also expressed concerns over the loss of institutional knowledge of legislators if we were to have term limits and that could enable institutional lobbyists or legislative staff to steer policy on certain issues.

Senator Lee considered whether enhancing public financing of elections could be equally beneficial to a proposal for term limits on legislators. He thinks there are two barriers to enhanced public funding: first, candidates must have realistic money to pay for election expenses; and second, partisan voters may object to giving money to their opponents who have become candidates. He mentioned the prospect of a pilot project to assess public

Appendix B – Meeting Minutes August 17, 2022

financing. Also, regarding term limits he thinks that in the past ten years about two-thirds of the House members have left, and that this is similar in the Senate.

Commissioner Leverenz expressed disappointment that although each legislator has a webpage on the Capitol website, most pages are not kept up to date. However, he mentioned that several Senators have the capability to send out detailed e-newsletters. Senator Lee said that communicating with the public is easier if there are staff skilled with social media, or having a communications person helps, but the legislator must still select the content, which takes time. He estimates that he has 14,000 people on his email list, but this is only about 25% of the people in his Senate district. In his experience, people do not respond as well to emails as they do to a conventional mailer or an in-person meeting.

Commissioner Izumi-Nitao asked if he could suggest areas of reform that are plausible, instead of relying solely on answering questions from Commissioners. Senator Lee said he would digest this discussion and give a written response. Vice Chair Harris said this type of response would be needed in about November.

C. [Representative Mark. M. Nakashima, Chair of the House Committee on Judiciary & Hawaiian Affairs.](#)

Representative Nakashima provided context on his experience as a chair of various committees over the years. Regarding term limits for a chair, he noted that the learning curve for a chairperson is steep as it takes several sessions to get a good handle of any committee's subject matter, jurisdiction, and critical issues. Representative Nakashima explained that early on he made a deliberate decision to gain experience serving as Chair of several House Committees. He was supportive of the idea to allow a lower threshold of Committee members to overrule the Chair's decision to hear or not hear a bill. In his opinion, members serving on big committees may have more prestige, serving on several smaller committees may be better for members over the long run.

Representative Nakashima shared with the Commission the process he undertakes in arriving at committee decisions or recommendations and for the scheduling of bills for a hearing. Specifically, he seeks out a consensus from the members of the Judiciary & Hawaiian Affairs Committee and also the public. Chair Foley asked whether publishing the practice of consultations with members on decision making would be beneficial to the public. Representative Nakashima said that after the hearing of testimony, but before decision making votes, he walks around the room to each Committee member and asks for questions, comments, or concerns. The responses of members may influence his decision making on a particular bill. Representative Nakashima expressed concerns on the potential of making these discussions public as some may not be willing to share their true concerns publicly, however as a chairperson Representative Nakashima does allow members of his committee to share their comments or concerns on bills during decision making should they choose to. Representative Nakashima pointed out that members can explain their vote when voting, but that he wouldn't want to share what members had told him before voting unless the member agreed.

Appendix B – Meeting Minutes August 17, 2022

Vice Chair Harris and Commissioners Mason and Leverenz asked for clarification on bills that are introduced "by request." Commissioner Leverenz noted that when the administration gets a bill introduced that it's clearly marked as coming from the Governor and asked whether there would be some utility in identifying the source of a bill so that the public could get a sense of who the legislation may impact. Commissioner Izumi-Nitao noted that bills from the Campaign Spending Commission and Ethics Commission are introduced by request and are marked as coming from those entities, and indicated that it could be extended to others asking for introduction of a bill by request. Representative Nakashima shared information on the practice of introducing bills "by request" and expressed caution on the idea of indicating who may have requested the legislator to introduce a bill on the actual bill itself as legislators often introduce bills that they may not totally support, and the "by request" is a signal that the submittal is a favor.

Representative Nakashima mentioned that he does not utilize the practice of introducing bills by request. Vice Chair Harris asked Representative Nakashima what he thought about the possibility of asking who requested certain bills to be introduced. Representative Nakashima stated that usually people can tell who requested the bill by looking at the supportive testimony. Commissioner Leverenz mentioned whether there is any utility in identifying a group or lobbyist as the requestor of a bill upon introduction. Discussion took place about the prospect of identifying anonymous "by request" bills from lobbyist disclosures. Commissioner Izumi-Nitao stated that the Campaign Spending Commission and the Ethics Commission were identified as the source of bills in their respective packages, so why not other requestors. Representative Nakashima stated that if it were required he didn't think this would be a problem and that he does honor requests from colleagues and the public to introduce a bill whenever feasible.

D. [Senator Karl Rhoads, Chair of the Senate Committee on Judiciary.](#)

Senator Rhoads noted that the Legislature is not subject to the Sunshine law but is subject to the Uniform Information Practices Act (UIPA) and regularly submits information to the public in response to UIPA requests. Senator Rhoads expressed concerns on its potential impact to the legislative process if the Legislature was to be subject to Sunshine. Senator Rhoads noted that application of the Sunshine law to the Legislature would result in the process of passing legislation to take much longer. Certain established efficiencies in the legislative process such as caucuses and serial telephone calls to other legislative members would then be nullified or need to be further modified or adjusted, particularly because of the larger size of the House. He stated that there is a tradeoff between the Sunshine law and an efficient process.

Senator Rhoads mentioned that when Hawaii's Constitution was written in 1969, we were a small state, with only about 700 thousand people, and now there were more than 1.4 million people, so the notion of a part-time, "citizen legislator" may be more difficult. He thinks if the session were extended, it would have more impact on elections as most incumbents would find it difficult to campaign during the legislative session, particularly

Appendix B – Meeting Minutes August 17, 2022

those who represent the neighbor islands. Senator Rhoads pointed out that incumbents weren't always incumbents but rather they were individuals who "scratched their way" into the House after spending hours doing spadework in their communities. The result is that incumbents are hard to beat. The session could also be stretched out by having more recesses, but people should ask whether we want to go away from the "citizen legislator" model.

Senator Rhoads said that in his opinion if you are a full-time legislator, it was necessary to raise money during session. He also provided context into the policy considerations of Act 283, Session Laws of Hawaii 2022 (Act 283), which prohibits elected officials from holding fundraising events during a legislative session. Senator Rhoads provided the Committee Chair a list of how other states restrict fundraising during session. He objected to a total ban on fundraisers by all candidates during session because this would be like an "incumbent insurance policy," but this type of bill may be easy to pass.

Commissioner Mason asked about the prospect of including a "fiscal tag" on bills, something which would inform lawmakers about whether they bill had fiscal impacts, estimate the cost of the bill, which departments were affected, etc. Senator Rhoads confirmed that at this time the Legislature did not have the resources to do this, and often relied on the Department of Taxation for such estimates as the Department was usually willing to provide such an opinion on fiscal bills up for Third Reading. Senator Rhoads echoed the idea that having accurate fiscal impact statements would be helpful.

Commissioner Leverenz asked about completion of a written explanation about why a bill was deferred and how the Conference Committee process could be improved. Senator Rhoads said explanations would have to be done after the deadline for hearing a bill. He offered that taking votes in real time and identifying how each person voted similar to the process used by Congress could be an improvement. By comparison, it does take some familiarity of the capitol webpage to find out how legislators voted on a measure. Regarding whether Sunshine laws could be introduced in conference committees, Senator Rhoads said someone could observe and comment on the chatting between Conference Chairs. Vice Chair Harris asked about possible solutions to situations where the conference bill significantly changes the wording of a measure at the last minute and if it would be possible to post the final Conference Committee work product and then schedule a recess. Senator Rhoads responded that due to meeting and filing deadlines, at some point it becomes impractical to allow any substantive input on a draft measure prior to the filing deadline passing due to human nature and the timing that agreements are reached.

In response to a question from Commissioner Leverenz about the potential use of a form with a checklist when a bill is deferred in order to give the public some information about the decision, Senator Rhoads noted that more information would be good and also that it might be helpful for members to take recorded votes. Senator Rhoads noted the human resources and actual time that would be necessary to accomplish proposals regarding the publication of why a bill was not heard by a committee or requiring bills to include information on its potential fiscal impact. He shared that there are current rules regarding conference committee procedure and limitations on how conference measures can be

Appendix B – Meeting Minutes August 17, 2022

amended. For example, the conference committee rules typically would only allow amendments to a conference draft that resolve the differences between House and Senate versions of a bill rather than inserting new content.

Senator Rhoads stated that time is the enemy during conference and usually it is not possible to have much impact on the conference draft unless you are a Conference Chair. Chair Foley asked if any portion of the Sunshine laws could be incorporated into chamber rules. Senator Rhoads responded that from his past experience in legislating on that area there was not much interest from his colleagues. In regard to Act 283 (Session Laws of Hawaii 2022), it was pointed out that the Commission had recommended both incumbents and new candidates not be allowed to raise money during session. In response to criticism that Act 283 did not do enough, Senator Rhoads said that Act 283 removed an easy way for incumbents to raise money. To achieve the "fairness" of banning solicitation and acceptance during session, incumbents would be handicapped if the ban only applied to them and not all candidates. Senator Rhoads reiterated that if an incumbent is doing a good job, why make it harder for the incumbent to be reelected? So there should be an appropriate balance struck between the restrictions and limitations of running for and being reelected into public office. As far as restricting lobbyists from donating money during session, Senator Rhoads thought this was worth doing, because lobbyists were always going to favor giving to incumbents because they are currently the individuals in power and agreed that the optics of lobbyists giving incumbents funds during session is an inherently bad look.

Commissioner Marumoto asked whether the recent Hawaii Supreme Court decision banning "gut and replace" tactics should become part of Senate and House rules. Senator Rhoads responded that in his opinion it is not necessary since the Supreme Court ruled such practices to be unconstitutional on a going forward basis. He thinks these techniques are still used, though not often. For example, S.B. 1350 (2021), a bill he introduced was altered dramatically but because it was something most people did not object to no one cared to protest the process problems.

Commissioner Marumoto also stated that it was important to post all testimony for hearings at least 24 hours in advance and questioned why this wasn't always done. Senator Rhoads responded that his Judiciary Committee does post testimony 24 hours in advance of the hearing, but he could not speak for other chairs. Commissioner Marumoto asked why bills are sometimes sent to Committees which have no jurisdiction over the matter as she herself encountered such behavior. Senator Rhoads said that in general he agrees this practice still occurs and it might be desirable to send bills to only two Committees that have the most jurisdiction over the subject matter.

Commissioner Marumoto stated that in general the Minority members of the Legislature are often not named a member or manager of a Conference Committee because they likely voted "no" on the prior reading of the bill. Such practices leads to a very friendly crowd in Conference. Commissioner Marumoto stated in general it should be possible to have 48 hours' notice for announcement of Conference drafts.

Appendix B – Meeting Minutes August 17, 2022

Commissioner Mason asked about voting when the legislator has disclosed a conflict of interest on the matter - should recusal from voting be the default? Senator Rhoads reported he had once tried to have himself excused from voting for this reason, but still be present for the vote, and the presiding officer had made this difficult. Senator Rhoads said going back to the tradition of having a "citizens legislature" and not vote may be something to consider, but that also would create other potential problems as well. Such as the custom becoming overly used by legislators and becoming an excuse for not voting on contentious issues.

The Commission noted the absence of Representative Ward, House Minority Policy Leader, who was scheduled to join the meeting.

V. Other matters

Due to time constraints, the Commission deferred the following agenda items:

1. Discussion of concepts to improve the legislative process; and
2. Consideration of draft nepotism bill.

The Commission's next meeting will include deferred agenda items and is scheduled for August 24 at 2:00 p.m. to discuss the next steps of the Commission.

The meeting adjourned at 4:00 p.m.